

(2013) 12 KAR CK 0367

In the Karnataka High Court

Case No : Writ Petition No's. 9958-59 of 2010 (S-KAT)

Sri M. Munikrishna

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0367

Hon'ble Judges : Mohan M. Shantanagoudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : M. Subramanya Bhat, for the Appellant; P.B. Bajentri, G.A., for the Respondent

Final Decision : Disposed Off

Judgement

Mohan M. Shantanagoudar, J.—The order dated 26.2.2010 in Application Nos. 1022 & 1023/2009 passed by the Karnataka Administrative Tribunal ("KAT" for short) is called in question in these writ petitions. The petitioner while working as Senior Pharmacist with the respondent was aspirant to get promotion to the post of Graduate Pharmacist on merits and as per rules since he had all the requisite qualifications for the promotional post; however the Directorate of Health & Family Welfare Services, Government of Karnataka framed Rules called "Karnataka Health and Family Welfare Department Services (Recruitment to certain posts) (special) Rules 2009 ("Special Rules" for short) for filling up of posts by way of direct recruitment; Out of total number of posts to be filled by direct recruitment, 19 posts of Graduate Pharmacists were also to be filled up by direct recruitment; though the petitioner was entitled to be promoted to the post of Graduate Pharmacist from the post of Senior Pharmacist, he was not promoted to the post of Graduate Pharmacist, since all the available 19 Graduate Pharmacist posts were sought to be filled by direct recruitment as per the Special Rules. Thus the petitioner approached KAT in Application Nos. 1022 & 1023/2009, which came to be dismissed by the order dated 26.2.2010. The said order is assailed in these writ petitions.

2. For promotion to the post of Graduate Pharmacist, the candidate is required to fulfill the following conditions:

- (1) A candidate must have been promoted from the cadre of Pharmacist to the cadre of Senior Pharmacist;
- (2) Such candidates must have possessed degree in Pharmacy or Post Graduate Degree in Chemistry with Pharmaceuticals as a special subject; and
- (3) Must have put in a service of not less than two years in administration or manufacturing establishment licenced under the Drugs and Cosmetics Act, 1940 or in teaching at a college of Pharmacy recognized by the Government of Karnataka.

Admittedly, the petitioner was working in the cadre of Senior Pharmacist and he was promoted to that post from the cadre of Pharmacist, as on the date of promulgation of Special Rules. Undisputedly, the petitioner has possessed Degree in Pharmacy. He has put in not less than 2 years of service in administration as is clear from Annexure-D1 dated 20.8.1991 issued by respective Medical Officer, Hospital of Communicable diseases, Bangalore.

3. It seems the application filed by the petitioner and the applications of some other aspirants for promotion to the posts of Graduate Pharmacists were heard together on the same day by the Tribunal and this has lead to confusion inasmuch as the Tribunal based on the facts relating to other persons, has dismissed the applications of the petitioner. In all other matters, the aspirants did not have requisite qualification for promotion to the posts of Graduate Pharmacists. Therefore their applications were rightly rejected. On the very ground, the application of the petitioner was also rejected, which is improper and incorrect.

As could be seen from the statement of objections filed by the State Government before the Tribunal, the petitioner was promoted to the post of Senior Pharmacist from the cadre of Pharmacist. It is also specifically stated in the statement of objections that except the petitioner, others are not eligible to be promoted as Graduate Pharmacists, which means the petitioner has got all the requisite qualifications to be promoted to the post of Graduate Pharmacist.

4. While issuing notice to the respondents in these writ petitions, this Court granted the interim order restraining filling up of one post of Graduate Pharmacist by direct recruitment out of 19 posts. Thus it is clear that one post of Graduate Pharmacist is lying vacant in view of the interim order passed by this Court. Since the petitioner is qualified to be promoted to the post of Graduate Pharmacist, there is no reason as to why his claim should be denied.

Accordingly, the order of the Tribunal cannot be sustained and the same is liable to be quashed. The petitioner shall be promoted to the post of Graduate Pharmacist as against one vacancy still available unfilled, as early as possible, but not later than the outer limit of three months. Petitions are disposed of

accordingly.